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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,707	11/30/2001	William H. Tew III	WHT-1	3674
27157	7590	04/26/2004	EXAMINER	
GREENWALD & BASCH, LLP 349 WEST COMMERCIAL STREET, SUITE 2490 EAST ROCHESTER, NY 14445			SPISICH, MARK	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 04/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/996,707	Applicant(s) TEW, WILLIAM H.	
	Examiner Mark Spisich	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. Claims 20 and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 20 and 21 were initially drawn to a simple static food support such as a shelf or the display/storage container of figure 10. The "handling apparatus" of claims 20 and 21 is not part of the machine of claim 1. This was never described as being part of the machine illustrated in figures 1 and 2. There is no disclosure of a **"removable produce handling apparatus associated with the produce handling machine"**. Claim 1 already recites that the foam padding is on a stationary food contacting surface. Also note that "apparatus" (claim 21, line 1) should have been amended to -- machine --.
2. Claims 20 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 20 is also indefinite/incorrect/confusing for much the same reason(s) set forth above. Claim 1 already recited that the foam padding is on a stationary produce contacting surface and in that regard it is not seen how claim 20 really adds anything to claim 1. In addition, the description of the invention (eg, figs 1-2) to which claim 1 is drawn does not mention anything about a handling apparatus which is associated with and removable from the handle machine.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (USP 2,635,267) in view of **EITHER** Zabron et al (USP 5,906,269) **OR** JP 6-246841. The patent to Smith discloses a produce handling machine comprising a stationary produce-contacting surface (13) on which is attached foam (sponge rubber; column 2, lines 43-45) padding (14a) to reduce bruising of the produce. The patent to Smith discloses the invention substantially as claimed with the exception of the foam including an anti-microbial agent. The patent to Zabron teaches that it is well known to add an antimicrobial agent to an article or material if it is intended to contact food grade products (column 6, line 44 thru column 7, line 10). It would have been obvious to one of ordinary skill to have incorporated such an agent into any surface of a machine that directly contacts the food article to inhibit bacterial growth. The manner of forming the foam material (claim 19) fails to define over the pad (14a) of Smith. '841 also discloses a foam padding with a myriad of uses and which further includes an anti-microbial agent incorporated therein (see attached Derwent abstract). It would have been obvious to one of ordinary skill to have incorporated such an agent into the foam pad (14a) of Smith to make it more sanitary.

5. Claims 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schnider et al (USP 2,880,432) in view of **EITHER** Zabron et al (USP 5,906,269) **OR** JP 6-246841. The patent to Schnider discloses a produce handling machine including a stationary produce contacting surface (62) and which further includes a foam (sponge rubber as per column 2, line 41) padding (63) covering at least a portion of the surface to prevent damage to the produce. The patent to Schnider discloses the invention substantially as claimed with the exception of the foam including an anti-microbial agent. The patent to Zabron teaches that it is well known to add an anti-microbial agent to an article or material if it is intended to contact food grade products (column 6, line 44 thru column 7, line 10). It would have been obvious to one of ordinary skill to have incorporated such an agent into any surface of a machine that directly contacts the food article to inhibit bacterial growth. The manner of forming the foam material (claim 19) fails to define over the pad (63) of Schnider. It would also have been obvious to incorporate such an agent into the foam of Schnider as taught by '841 for the reason stated above.

6. Claims 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross et al (USP 3,651,922) in view of **EITHER** Zabron et al (USP 5,906,269) **OR** JP 6-246841. The patent to Ross discloses a produce handling machine including numerous food contacting surfaces (any one of the conveyor rollers 78 or the **stationary** surfaces 114 and 118 in fig 5 (see column 6, lines 1-7) which cross-hatching is that of foam as well as being the same as the rollers (84), which are disclosed as being a foam. The patent to Ross discloses the invention substantially as claimed with the exception of the

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anti-microbial agent. The patent to Zabron teaches that it is well known to add an antimicrobial agent to an article or material if it is intended to contact food grade products (column 6, line 44 thru column 7, line 10). It would have been obvious to one of ordinary skill to have incorporated such an agent into any of the food contacting surfaces (including the stationary padded surfaces at 114 and 118) to inhibit bacterial growth. The foam padding material of Ross is preferably closed cell (column 3, lines 4-13) (claim 16) and includes a continuous yet flexible outer layer (89) (column 4, lines 55-60) (claim 17) of plastic or other suitable wear resistant material. The use of vinyl (claim 18) for this material would be an obvious choice of design. The manner of forming the foam padding (claim 19) fails to define over the structure of Ross. It would also have been obvious to incorporate into the foam pad of Ross an agent as in '841 for the reason stated above.

7. Claims 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyle (USP 6,309,741) in view of JP 6-246841. The patent to Boyle discloses a stationary produce-contacting surface (states that the inventive pad is for placement in a shopping cart) and further including a foam padding covering (column 2, line 24 thru column 4, line 20) at least a portion of said surface to reduce bruising (column 1, lines 31-38). The patent to Boyle discloses the invention substantially as claimed with the exception the anti-microbial agent. '841 discloses the incorporation of an anti-bacterial agent (see attached Derwent abstract) into a foam material having uses in many different environments (including both as a padding for a chair and also in a refrigerator). It would have been obvious to one of ordinary skill to have modified the

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pad of Boyle as such in order to render the pad more sanitary. The preamble recitation of "produce handling machine" fails to define any particular structure. A preamble is denied the effect of a limitation wherein the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951). To the extent that the claim defines a « machine, the shopping cart of Boyle would meet this recitation in its broadest sense. The foam of Boyle is preferably closed-cell (column 2, line 26) (claim 16) and is further provided with a flexible outer layer (column 1, lines 52-55) (claim 17). The use of vinyl for this layer (claim 18) would be an obvious choice of design and the pad of Boyle is further molded (column 2, lines 51-52) (claim 19).

8. Claims 1 and 6-11,20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (USP 2,195,371) in view of Ross et al (USP 3,651,922) and further in view of **EITHER** Zabron et al (USP 5,906,269) **OR** JP 6-246841. The patent to Moore discloses produce handling machine comprising a receiver (15,10) a produce washer (essentially the "soaking", "impeller" and "rinse" tanks of fig 1), and a dryer unit (see fig 1a) of the absorbing type. The patent to Moore also discloses numerous fixed and moving surfaces that contact the produce being cleaned. The patent to Ross a plurality of conveyor rollers (78) comprised of closed-cell foam (84) (column 3, lines 4-12) and further discloses **padding (118) for the stationary surfaces** (114,116) and the cross-hatching is that of foam (and it also the same as the portion of the rollers that is foam). It would have been obvious to one of ordinary skill to have provided such

padding to any of the fixed surfaces of the machine of Moore to prevent bruising or other damage to the produce. The patent to Ross; however, does not disclose the inclusion of an antibacterial agent in the foam padding. The patent to Zabron discloses a produce handling conveyor which states (abstract, lines 13-16) "if the belting is intended to be used to convey food grade products, preferably an antibacterial agent is incorporated into the elastomeric material to inhibit bacterial growth". The patent to Zabron teaches that one of ordinary skill would incorporate such an agent into any food contacting surface or material (moving or stationary) in a handling machine so as to inhibit bacterial growth. '841 discloses the inclusion of an antimicrobial agent into a foam material. It would also have been obvious to one of ordinary skill to have modified the padding of Ross in view of '841 for the same reason stated above. The patent to Ross teaches that the padding material would preferably be closed-cell (claim 6). The patent to Ross further discloses a closed-cell padding material (84) which is covered by flexible plastic layer (column 4, lines 54-56) (claim 7). The use of vinyl for this purpose would be an obvious choice of design. The patent to Moore discloses an inspection conveyor (31) including a plurality of parallel rolls (32) (claim 9). The patent to Ross again teaches the use of a foam covering for the conveyor rolls. The patent to Moore also discloses the "sizer" (claim 10) with a drop surface (89). The "packing table" could be the chute (95) (claim 11). The patent to Ross discloses the benefit of padding both movable as well as stationary surfaces of produce handling machine and as such any surfaces of Moore could be suitably padded in order to reduce damage to the produce. Once there is a teaching of the incorporation of an anti-microbial into a food handling



surface/material, one would deem it obvious to provide such an agent to any surface of a machine which directly contacted the produce. In fact, it would not make sense to provide it to just one surface thereof. Insofar as claims 20 and 21 are presently understood, they appear to merely duplicate the stationary surface of claim 1 and as such have been grouped together with claim 1.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Kurtz (USP 3,242,008). The patent to Moore fails to disclose the recited drape, although the provision of such at the exit of a produce washer is well known (see #24 in Kurtz; USP 3,242,008). It would have been obvious to one of ordinary skill to have provided such a drape at the exit of the washer of Moore to contain the fluid therein. The further inclusion of the antimicrobial into this element would be obvious as set forth above.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Bowman (USP 2,012,655). The patent to Bowman discloses produce washer including rubber scrubbing members (5) (page 2, col 1, lines 1-5). The further inclusion of the antimicrobial into this element would be obvious as set forth above.

11. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Butterworth (USP 3,449,779). The patent to Moore discloses the invention substantially as claimed with the exception of the washer including bristled-brushes. The patent to Butterworth discloses a produce washer with nylon bristles (column 3, lines 44-46). The further inclusion of the

antimicrobial into this material would be obvious as set forth above. In fact, DUPONT makes a well-known nylon bristles material (under trademark TYNEX) which including an antibacterial agent therein.

12. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Newhall et al (USP 2,534,205). The patent to Moore discloses the invention substantially as claimed with the exception of the particular structure of the 'water absorber', although it does disclose a dryer which operates on the same general principle. The patent to Newhall discloses a produce dryer including open cell foam roller (14) as well as wringers (18). It would have been obvious to one of ordinary skill to have substituted any known produce dryer for that of Moore. The further inclusion of the antimicrobial agent into the material of the absorbent rollers (14) would be obvious for the stated reason above.

### ***Response to Arguments***

13. Applicant's arguments filed 10 March 2004 have been fully considered but they are not persuasive. Applicant's primary arguments are addressed below. Ross does teach a (foam) padding (118) on a stationary surface and Zabron does discloses a conveyor belt than, when used to convey food grade products, preferably includes an anti-microbial agent therein. The purpose of this agent is to inhibit the growth of bacteria, especially the transfer thereof from the surface(s) of the machine that directly contact the food products. The reason that one would put such an agent into the material of the belt of Zabron would be the same no matter what the material was, including foam. The incorporation of such an agent in foam is also known in the art. It

would be inconsistent with the suggestion in Zabron to provide the antimicrobial agent to only one food contacting surface of a machine which includes many such surfaces. In view of the additional ground(s) of rejection, this action has been made non-final.

**Conclusion**

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JP '875 is pertinent to a foam food-contacting surface and Becker to the padded food contacting surfaces.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Mark Spisich

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